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Vermont Fair Housing News

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WHAT'S INSIDE:

COMPLYING WITH THE LAW OF ADVERTISING

INTRODUCTION

Vermont's fair housing statute includes the following provision regarding real estate advertising and related spoken words:

> It shall be unlawful for any person … [t]o make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation or discrimination based on race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.[1]

This provision is nearly identical to a provision in the federal Fair Housing Act.[2] The primary difference between the two statutes is that the federal version lacks Vermont's protected categories of sexual orientation, age, marital status and recipients of public assistance.

The Vermont Supreme Court's interpretation of Vermont's fair housing law is guided by judicial opinions regarding the federal statute.[3] Because there is no case law about discriminatory advertising and spoken statements under Vermont's fair housing statute, the information in this article comes from decisions interpreting the parallel provision under the federal law. Guidance from the federal Department of Housing and Urban Development (HUD) is also applied here. The courts and HUD have interpreted the prohibition against discriminatory advertising and statements broadly as described below.

DISCRIMINATORY WORDS

Q. Are there particular words or phrases in an advertisement for housing that are considered

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VERMONT HUMAN RIGHTS COMMISSION, LISBETH ARBOUR AND CHRISTOPHER TANNER v. ANNA ST. CLAIR

FAIR HOUSING LAWSUIT RESULTS IN RECOVERY OF OVER $90,000

In November 2004, Lisbeth Arbour filed a Charge of Discrimination with the Vermont Human Rights Commission alleging that her landlord, Anna St. Clair, discriminated against her because of her disabilities and her receipt of public assistance. Ms. Arbour claimed that Ms. St. Clair made discriminatory statements regarding her disability and her receipt of public assistance, and took harassing actions intended to exacerbate her disability. She claimed further that Ms. St. Clair refused to make several reasonable accommodations for her disability. Additionally, Ms. St. Clair allegedly stopped accepting Ms. Arbour's Section 8 housing subsidy payments in retaliation for Ms. Arbour's intention to file a charge of discrimination with the Human Rights Commission, and also because Ms. Arbour refused to testify against another tenant, Christopher Tanner, who had previously filed a charge of discrimination.

In the days before Ms. Arbour was scheduled to move into the apartment, Ms. St. Clair precipitated several disputes with Ms. Arbour. Ms. St. Clair also asked Ms. Arbour to sign an addendum to her Section 8 lease. Ms. Arbour knew such an addendum was prohibited by Section 8 regulations, and refused to do so. Ms. St. Clair additionally asked Ms. Arbour to testify against another tenant in an eviction proceeding and Ms. Arbour refused to do so.

On August 1, 2004, the day Ms. Arbour was scheduled to move into the apartment, Ms. St. Clair spoke to a friend of Ms. Arbour who had been helping her

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EQUAL HOUSING OPPORTUNITY

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discriminatory under the law?
A. Any word or phrase which an ordinary reader would naturally interpret to indicate a preference not to rent to someone because of their membership in a protected category would likely be deemed a violation of this provision. For example, a 1972 decision held that an advertisement for an apartment in a "white home" violated the law.[4] Advertisements for apartments in a "Christian home" or for "mature persons" or for a "bachelor" would likely also be found unlawful. Any word or phrase which indicates a discriminatory preference for or against a housing customer based on the customer's membership in a protected category would likely be deemed a violation of this provision. For example, the phrase "no wheelchairs" in an advertisement would likely be found to violate the law. HUD guidance indicates that the phrase "desirable neighborhood" is acceptable.[5]

ADVERTISING CASE HIGHLIGHT: U.S. v. Hunter, Fourth Circuit Court of Appeals 1972
Bill Hunter was the editor of The Courier, a small weekly newspaper in Maryland. In January 1970, The Courier published a classified ad for a furnished apartment in what the ad said was a "white home." The U.S. Department of Justice filed an action in federal district court against Mr. Hunter and The Courier, and the district court issued a declaratory judgment against the defendants. The case went up to the Fourth Circuit Court of Appeals which affirmed the district court's declaratory judgment, holding that 1) the federal Fair Housing Act's prohibition against discriminatory advertising applies to newspapers and other media that carry such ads, even though others actually composed and placed the ads; 2) applying the Fair Housing Act's prohibition against discriminatory ads does not violate the First Amendment's guarantee of freedom of the press; and, 3) whether an advertisement violates the Fair Housing Act is to be determined by how an ordinary reader would naturally interpret that ad. Each of these holdings has endured to the present day.

DESCRIPTIVE WORDS

Q. Are landlords allowed to advertise that an apartment is accessible for wheelchair users?
A. Yes. Descriptions of the premises and services are generally acceptable, so long as they do not indicate a preference for members of a certain protected category. Other examples of acceptable descriptions include "apartment complex with chapel," "walk-in closet," "fourth floor walk-up" and "kosher meals available." In general, the ad should describe the property, not the tenant.

MLS AND OTHER DOCUMENTS

Q. Must a realtor's MLS (Multiple Listing Service) descriptions of property adhere to these rules?
A. Yes. The prohibition against discriminatory ad-vertising and statements extends to MLS des-criptions, leases, and any other documents regarding the sale or rent of real property.

POTENTIAL DEFENDANTS

Q. Who can be found liable for discriminatory advertising?
A. There are two groups that are possible defendants in a lawsuit alleging discriminatory real estate advertising: 1) individuals engaged in the sale or rental of housing (e.g., property owners and property managers who place ads), and 2) advertising media (e.g. newspapers and magazines which publish discriminatory ads).

FREEDOM OF THE PRESS

Q. Even if an advertisement is truly discriminatory, wouldn't the U.S. Constitution's guarantee of freedom of the press protect landlords and newspapers from liability?
A. No. Federal courts have made it clear that commercial speech (such as real estate advertisements) are not entitled to as much constitutional protection as other forms of expression. Additionally, commercial speech that furthers an illegal activity (such as unlawful discrimination) does not merit constitutional protection.[6]

EXCEPTIONS

Q. Are there any exceptions to the law prohibiting discriminatory advertising?
A. Yes. Despite the prohibition on discrimination based on sex, it is lawful for an advertisement to indicate a preference for persons of a specified sex in two situations: 1) where sharing of living areas is involved, and 2) where a dwelling will be used exclusively for dormitory facilities by an educational institution. And despite the prohibitions on discrimination because of age and having minor children in the household, it is

ADVERTISING CASE HIGHLIGHT: Ragin v. The New York Times Co., Second Circuit Court of Appeals 1991
Deborah and Luther Ragin were African Americans seeking housing in New York City. They and other plaintiffs filed an action against The New York Times alleging that over a period of twenty years The Times had published display ads for real estate "featuring thousands of human models of whom virtually none were black." In those few ads in which African American models were depicted as home buyers, the housing in question was in predominantly black areas. The Ragin court held that the Fair Housing Act is violated by any ad for housing that "suggests to an ordinary reader that a particular race is preferred or dispreferred . . . " The court described the "ordinary reader" as "neither the most suspicious nor the most insensitive of our citizenry." So long as the ads would likely discourage ordinary readers of a particular race from answering the ad, The Times would be in violation of the Fair Housing Act even if the advertiser did not intend to discriminate. Finally, the court held that the use of human models could, without words, indicate an unlawful racial preference.

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ADVERTISING CASE HIGHLIGHT: Austin v. Drown, Vermont Human Rights Commission determination, 2004

On May 14, 2004, Rose Austin filed a charge of discrimination alleging that Lawrence Drown discriminated against her in housing because she had a minor child. Specifically, Ms. Austin claimed that she learned from a friend that there was a house for rent. Shortly thereafter, Ms. Austin and her husband drove to the property to obtain contact information posted at the house. When she arrived, Ms. Austin saw a sign in the window stating that the two bedroom house was for rent. The sign also said, "No smoking, no pets, no kids" and provided a telephone number. The telephone number was assigned to Lawrence Drown at his residence. According to Ms. Austin, Mr. Drown was at the house when she arrived, showing the house to a prospective tenant. Ms. Austin told Mr. Drown she was interested in the house and asked him why he did not accept children. Mr. Drown told Ms. Austin that a child had drowned in a river in a nearby town a couple of years before; because there was a river near the house, posing a threat of drowning, he would not rent to a family with children. Ms. Austin told Mr. Drown she would put up a fence and would not let her daughter go near the river. Mr. Drown told her he would not rent to her and so Ms. Austin and her husband left the premises. The next day, Ms. Austin called the Vermont Human Rights Commission, and the following day a Commission staff member drove to the Drowns' property and took pictures of the signs in the window of the house. The pictures show the signs posting the following information:

"For rent 2 bedrooms
On Route 2 – Marshfield
NO PETS
NO KIDS
NO SMOKING"

Following further investigation, the Commission determined there were reasonable grounds to believe that Lawrence Drown had violated Vermont's fair housing law. For six months thereafter, Commission staff unsuccessfully attempted to bring the parties to a settlement agreement. Then, in June 2005, the Commission filed a lawsuit in Washington Superior Court on behalf of Ms. Austin and her child. Trial is pending.

lawful to advertise housing for older persons so long as the housing meets the requirements for senior housing under Vermont law.[7]

ADVERTISING BY THOSE EXEMPT FROM THE PROHIBITION ON DISCRIMINATION

Q. Within Vermont's fair housing statute, there are a few exceptions to the prohibition on discrimination. For example, a person who owns and lives in a duplex may lawfully reject an applicant to rent the other half of the building because of the applicant's race, religion or other protected category. Could this landlord lawfully advertise for a tenant of a particular race or religion?

ADVERTISING CASE HIGHLIGHT: Housing Discrimination Project v. Times-Argus Association, Vermont Human Rights Commission determination, 2007

The Housing Discrimination Project (HDP), a fair housing advocacy organization, discovered that a number of housing rental ads in the Times-Argus newspaper indicated a preference for people who did not have minor children. Ads used words such as "ideal for mature couple," "single," "2 people," "singles only" and "adults preferred." HDP filed a charge of discrimination with the Commission, and on January 17, 2007, the Commission determined that there were reasonable grounds to believe that the Times-Argus unlawfully published such ads. The parties are currently in the process of seeking

A. No. Even landlords who are exempt from the prohibition against discrimination are nonetheless prohibited by federal law from publishing or making discriminatory advertisements and statements. Courts and commentators state that applying the ban on discriminatory advertising to otherwise exempt landlords furthers the purposes of the federal Fair Housing Act.[8] Those purposes include protecting minority home seekers from suffering insult and breaking down the notion that illegal discrimination permeates America's housing market.

ADVERTISING CASE HIGHLIGHT: HUD v. Ro, HUD Administrative Law Judge decision 1995

Julie Obi, a black woman from Nigeria, held a job as a social worker. As part of her job duties, she assisted a client, a white woman, in her search for housing. In response to an advertisement, Ms. Obi and her client visited the office of Ms. Ro, a property owner. Ms. Ro asked the women what they wanted, and Ms. Obi responded that they were there to inspect the advertised apartment. Ms. Ro then looked at Ms. Obi while pointing at the client and stated, "She's okay for the apartment. You are not." Ms. Obi asked Ms. Ro what she meant, and Ms. Ro stated, "She's okay for it. You are not." Ms. Ro then showed them the apartment. During the tour, Ms. Obi explained that she was a social worker and that Social Security would pay the first month's rent and security deposit for her client. Ms. Ro then became friendlier and, upon their return to Ms. Ro's office, she rented the apartment to Ms. Obi's client. Ms. Obi returned to her office feeling "humiliated, embarrassed and ... upset." Two weeks later she filed a complaint with HUD. A HUD administrative law judge held that Ms. Ro's statements violated the Fair Housing Act because "they indicate to an ordinary listener that Ms. Ro preferred [the client] and rejected Ms. Obi solely because of race." Even though Ms. Obi was not, herself, seeking to rent the apartment, the administrative law judge awarded her $10,000 in damages for emotional distress caused by Ms. Ro's unlawful discriminatory statements. (This decision is available on the internet at www.hud.gov/offices/oalj/cases/fha/pdf/ro1.pdf)

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PHOTOGRAPHS AND SYMBOLS

Q. What if the wording of an advertisement is not discriminatory but a photograph or a symbol indicates a preference for members of certain protected categories?

A. A photograph or symbol alone can cause an advertisement to violate the law. An extreme example of such a symbol might be the inclusion of a swastika in an advertisement. A subtler but still unlawful indication of preference may be presented, for example, in an ad containing a photograph of a housing complex that includes human models of only one race.

INTERNET

Q. Do these laws apply to advertising on the internet?

A. In all likelihood, yes. Although there is no clear statute or case law on this point, HUD has taken the position that the Fair Housing Act's prohibition on discriminatory advertising applies to internet content. Currently, there is a lawsuit pending against craigslist.org, a popular web site, alleging that it published discriminatory advertising for housing. That lawsuit will likely clarify this new legal issue.

ADVERTISING CASE HIGHLIGHT: HUD v. Schuster, HUD Administrative Law Judge decision 1995

When Linda Wegner was searching for housing for herself and her two daughters, aged 11 and 15, she settled upon a condominium. A week after she made a monetary offer, she learned that the condominium by-laws barred children under the age of 14 and pets. Ms. Wegner requested that the condominium association waive both restrictions. The association agreed to waive the restriction regarding young children but not the prohibition against pets. In a conversation with Raymond Schuster, president of the association, Mr. Schuster stated to Ms. Wegner that her children would be the only children in the complex and for that reason they might be "a little uncomfortable." The Association did not waive the prohibition against pets, and for that reason Ms. Wegner subsequently declined to purchase the condominium. Ms. Wegner then filed a complaint with HUD alleging discrimination based upon minor children in her household and also discriminatory statements in the condominium by-laws and in Mr. Schuster's spoken words. The HUD administrative law judge found there was no act of discrimination because the condominium association freely waived its restriction on young children. However, the judge held that the by-laws and Mr. Schuster's words constituted discriminatory statements in violation of the Fair Housing Act which caused Ms. Wegner and her children to suffer emotional distress. The judge ordered Mr. Schuster and the condominium association to jointly pay $2,500 in damages to Ms. Wegner and her children. Additionally, Mr. Schuster and the association were each required to pay civil penalties to HUD in the amounts of $750 and $1500 respectively. The judge also ordered the condominium association to eliminate discriminatory language from its condominium documents. (This decision is available on the internet at www.hud.gov/offices/oalj/cases/fha/pdf/schuster.pdf)

SPOKEN WORDS

Q. The statute seems to prohibit discriminatory "statements." Does that mean that my spoken words can be declared unlawful?

A. Yes. Landlords or their agents who use spoken words that overtly or subtly indicate a preference based on membership in a protected category are liable for those words. This is true under federal law even if the dwelling is exempt. Courts consider liability for discriminatory words separate from (and in addition to) liability for discriminatory acts.

FOR FURTHER INFORMATION

Q. Where can I get further guidance about appropriate advertising for housing?

A. The Vermont Human Rights Commission[9] and the Fair Housing Project[10] welcome inquiries. Additionally, there is a great deal of information available on the internet. For example, a Google search using the terms "fair housing advertising" yields many useful web sites.

END NOTES

[1]Title 9, Vermont Statutes Annotated, section 4503(a)(3)

[2] Title 42, United States Code, section 3604(c)

[3]Human Rights Commission v. LaBrie (1995), volume 164 of Vermont Reports at page 243. This case is available on the internet at dol.state.vt.us/gopher_root1/000000/supct/164/op.94-230

[4]United States v. Hunter, 459 Federal Reporter 2d Series at page 205 (Fourth Circuit Court of Appeals 1972)

[5] Memo of Roberta Achtenberg, 1/9/95, available on the internet at www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf

[6]See, for example, Pittsburgh Press Co. v. Human Relations Commission, a 1973 U.S. Supreme Court decision

[7]Title 9, Vermont Statutes Annotated, section 4503(b). You can find this statute on the internet at www.leg.state.vt.us/statutes/fullsection.cfm?Title=09&Chapter=139&Section=04503

[8]Robert G. Schwemm, Discriminatory Housing Statements and §3604(c): A New Look at the Fair Housing Act's Most Intriguing Provision, Volume 29 Fordham Urban Law Journal at pages 249-250 (2001)

[9] Telephone - voice: 1-800-416-2010, TTY: 877-294-9200; Web site - www.hrc.state.vt.us

[10]Telephone - 1-800-287-7971; Web site - www.cvoeo.org/vti/fair.htm

VERMONT HUMAN RIGHTS COMMISSION

FHP FAIR HOUSING PROJECT CVOEO

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move in. Ms. St. Clair told the friend that she had changed her mind and did not want Ms. Arbour living in the apartment. The friend stated to Ms. St. Clair that there was a lease which she could not cancel unilaterally. Ms. St. Clair told the friend that she was changing the apartment's locks. Ms. St. Clair then called Ms. Arbour and left a voice mail message saying that she was canceling the lease and that she had removed Ms. Arbour's belongings and put them outside.

Ms. Arbour then went to the building and found that the apartment's locks had, in fact, been changed. She also learned that her belongings had been moved into a carriage house connected to the building and that the carriage house door was locked. Ms. St. Clair was not present. Ms. Arbour called the police. With police approval, Ms. Arbour's friend changed the locks again. The police left a note for Ms. St. Clair asking her to contact the police department. When Ms. St. Clair returned, Ms. Arbour's friend confronted her. Ms. St. Clair then unlocked the carriage house. Ms. St. Clair told several other tenants that she was going to evict Ms. Arbour. Ms. St. Clair then went to the police station where she was arrested for criminal trespass. A condition of her release was that she have no contact with Ms. Arbour.

On August 5, 2004 Ms. Arbour received a notice to quit from Ms. St. Clair. The notice stated that Ms. Arbour had violated the lease by making physical modifications; however, the modifications had been requested as reasonable accommodations by Ms. Arbour and Ms. St. Clair had previously agreed to them.

On February 16, 2005, the Vermont Human Rights Commissioners issued a Final Determination which found that there were reasonable grounds to believe that Anna St. Clair had discriminated against Lisbeth Arbour in housing on the bases of disability and being a recipient of public assistance. The Commissioners also found there were reasonable grounds to believe Ms. St. Clair had unlawfully retaliated against Ms. Arbour.

The Commission attempted to negotiate a resolution; however, Ms. St. Clair failed to respond in any meaningful manner to these attempts. On August 18, 2005, the Vermont Human Rights Commissioners directed its counsel to file a complaint in Vermont Superior Court against Ms. St. Clair on behalf of Lisbeth Arbour.

On September 7, 2005, Superior Court Judge Wesley heard the plaintiffs' request for a Writ of Attachment. After an evidentiary hearing that was held without defendant St. Clair in attendance, the Court issued an Order of Approval and a Writ of Attachment on Ms. St. Clair's property in the amount of $25,000.

The matter was set for jury trial on October 17, 2005. The defendant failed to appear on that date. Ms. Arbour moved for dismissal of all claims brought against her by the defendant for want of prosecution. The Court granted these motions. Ms. Arbour and the Commission each waived their right to a trial by jury and requested that the Court hear the matter at the earliest possible date. The Court set the remaining matters for trial on October 19, 2005. On that date, the defendant again did not appear. On November 18, 2005, the trial court issued its findings and awarded Ms. Arbour $20,000 in compensatory damages and $5,000 in punitive damages (which with interest through May 30, 2007 totals $29,581) and awarded Mr. Tanner $15,000 in compensatory damages (with interest through May 30, 2007, $17,751). The Court granted the Commission its request for an injunction against further violations by Ms. St. Clair, and invited a petition for attorney's fees and costs. There was a hearing on February 23, 2006 with respect to the Commission's Petition for Attorney's Fees. Once again, Ms. St. Clair failed to appear. The Court awarded the Commission the full amount it requested for attorney's fees, $31,185.69 (with interest through May 30, 2007, $35,901).

Defendant Anna St. Clair took an appeal from the Court's decision. She appeared on her own behalf by telephone from New Zealand for the oral argument before the Vermont Supreme Court on October 26, 2006. On December 21, 2006, a three-justice panel affirmed the Opinion and Orders issued by the trial court. The Commission will also recover $7,477 in attorney's fees incurred in connection with the litigation in the Vermont Supreme Court.

A REQUEST TO OUR READERS

A tightening budget prevented us from publishing the Autumn 2006 issue and nearly shut down this newsletter. You can help us reduce our costs and continue publication by submitting your e-mail address on the Feedback Form in this issue. Each issue we distribute electronically saves us money!

We hope to publish this newsletter as long as it is helpful to landlords, tenants, realtors, lenders and housing advocates. Tell us what you think! Use the Feedback Form or contact the editor, Paul Erlbaum, directly by mail at 14-16 Baldwin Street, Montpelier, VT 05633-6301, by e-mail at paul.erlbaum@state.vt.us or by phone at 802-828-2490.

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AROUND THE NATION

♦ Recent Vermont fair housing settlements

During the first half of 2007, the Housing Discrimination Project (HDP) brought charges to the Vermont Human Rights Commission regarding several Vermont landlords for allegedly discriminating against people with minor children. Three of these cases have gone to mediation, resulting in the landlords paying settlement amounts of $10,000, $14,000 and $17,000 to HDP. In addition to paying these amounts, the landlords will attend fair housing training and will have their rental activities monitored for several years.

♦ Mother of young child prevails in court action against steering

When Regina Drenik sought to rent a second floor apartment in Sacramento, California for herself, her partner and their 13 month old son, landlord Gordon Ohanesian told her that he was concerned the apartment posed safety hazards to the child. The landlord stated that the balcony and the stairs leading to the upstairs apartment as well as the apartment house swimming pool were all potential dangers to children. He stated that a downstairs unit might be more suitable, that a lower level apartment would be available within a month and that she should wait for the vacancy. Ms. Drenik contacted the Human Rights and Fair Housing Commission of Sacramento which conducted a test. Testers telephoned the landlord to inquire about the apartment and found the landlord reluctant to consider the tester who stated she had a young child. Ms. Drenik then filed a complaint in U.S. District Court (Eastern District of California) alleging that the landlord sought to "steer" her away from renting the second floor apartment because she had a young child. The landlord filed a motion for summary judgment which the court denied on August 15, 2006, stating "A landlord cannot justify steering families with children away from housing by groundlessly claiming that the housing would be unsafe for resident children. As a general rule, safety judgments are for informed parents to make, not landlords."

♦ Louisiana parish passes ordinance which limits prospective renters. Rights group sues

In September 2006, St. Bernard Parish, a suburb of New Orleans, passed an ordinance barring single-family homeowners from renting to anyone except blood relatives unless the owner gets special permission from the Parish Council. Parish Council member Joey DiFatta said, "We're taking bold moves to preserve the character of St. Bernard, its owner-occupied neighborhoods, and the way to preserve that atmosphere is to keep St. Bernard the way it was pre-Katrina. We hope folks understand it has nothing to do with people who rent. But we don't want a predominant renters community." The Greater New Orleans Fair Housing Action Center called upon St. Bernard Parish to repeal the ordinance. According to an Action Center press release, "the blood relative requirement will prevent St. Bernard homeowners from renting to any person not of the owner's own race and national origin ... United States Census Data indicate that whites own nearly 93% of St. Bernard Parish owner-occupied housing. As a result, in most circumstances, only whites would be able to rent most single-family housing in the Parish." James Perry, Executive Director of the Action Center commented, "Post-Katrina, citizens have partnered like never before, opening their hearts and homes to strangers. However, the St. Bernard Parish Council has taken action to shut St. Bernard's door to just about anyone who isn't white. We call on the Parish to reverse the ordinance immediately." The parish did not repeal the ordinance, and in early October 2006 the Action Center filed a lawsuit. In early November 2006, the Action Center filed a motion seeking to enjoin the parish from enforcing the ordinance. One week later, the Parish agreed to voluntarily suspend enforcement of the ordinance pending the outcome of the lawsuit.

♦ Illinois discriminatory zoning case settles

The Village of South Elgin, Illinois recently settled a fair housing case with the federal Department of Justice (DOJ) by agreeing to reverse an allegedly discriminatory zoning decision against a group home and paying $55,000 in damages.

Unity House, a rehabilitation program for persons recovering from alcohol or drug dependency, applied to the Village for a required "special use permit" to operate a group home. This application aroused much public opposition, and the Village Board denied the permit. Among the reasons cited by the Village for its denial was the demand for on-street parking that would have been created by the group home. Unity House made proposals that would have reduced the demand for parking, including creating additional off-street parking, and reducing the number of residents from nine to seven. The Village declined to consider any of these proposals.

The DOJ asserted that Unity House residents are persons with disabilities under the federal Fair Housing Act, and that when the Village denied the application for a special use permit, it violated their rights under the Act. The Village denied any violation.

On December 16, 2006 a settlement was filed in U.S. District Court under which the Village agreed to issue a special use permit allowing for up to seven residents. The Village also agreed to pay $25,000 to Unity House, $7,500 each to two residents who were not able to live in the home when the permit was denied, and $15,000 to the United States as a civil penalty. The settlement agreement also requires the Village Board and relevant Village employees to receive training on the Fair Housing Act. Finally, the settlement requires the Village to keep and maintain records for the next three years relating to other zoning and land use requests regarding homes for persons with disabilities.

FAIR HOUSING TESTING REVEALS DISCRIMINATION THROUGHOUT MAINE

A legal services organization, Pine Tree Legal Assistance, recently completed a second year of fair housing testing in counties across the state of Maine. Testing consists of pairs of individuals (the testers), both of whom respond to an advertisement for housing. One tester is (or portrays herself as being) a member of a protected category, while the other tester is not (or portrays herself as not being) a member of that protected category. Discrimination is revealed when the testers get significantly different responses to their inquiries from the same landlord. In each Maine county where testing took place, there was evidence of discrimination.

Fifty percent of the tests based upon receipt of public assistance revealed strong evidence of discrimination. Some landlords said they thought people receiving public assistance might "trash the place," or did not have a "monetary incentive to act responsibly." Other landlords did not want to work with a local housing authority or complete its paperwork. Landlords reportedly felt free to express their prejudices about people living on very low incomes without bothering to evaluate the individual merits of potential tenants through the application process.

Pine Tree's testers also found discrimination in thirty-two percent of tests based upon minor children in the household and in ten percent of tests based upon race and national origin. In Aroostook County, a Hispanic family inquiring about a two bedroom rental was steered to an old trailer with broken windows. A white tester calling the same landlord was told about two other units the landlord had available -- a two-bedroom apartment and a house for rent.

Additionally, discrimination toward Native Americans was shown in three out of nine tests done in Bangor and Eastport. Some of the Native American testers were not called back by landlords when they left messages stating their first and last names. Meanwhile the white testers, who called after the Native Americans, were called back by landlords and shown apartments.

Pine Tree also filed complaints against three Maine newspapers which printed advertisements that were overtly discriminatory. The ads for rental units stated that the apartments were "not suitable for children" and "good for single person or quiet couple." Federal law makes it illegal to print or publish blatantly discriminatory advertisements.

TENANTS WITH DISABILITIES AND CITY OF MONTPELIER REACH SETTLEMENT

Tenants' defense against code enforcement leads to measures to preserve affordable housing

On August 23, 2006, the Montpelier City Council ratified the settlement of a lawsuit filed by six tenants with disabilities. The tenants alleged that the City had discriminated against them because of their disabilities. The city had tried to shut down their Sibley Avenue residence as part of a code enforcement action against the property owner in May 2005. Vermont Legal Aid represented the tenants and argued that the City's code enforcement action was a pretext for housing discrimination. The tenants asserted that the owner had remedied many safety violations and the City could have obtained the property owner's further compliance. The tenants claimed that the city attempted to close the building and evict the tenants upon less than two weeks notice.

The tenants invoked their right to be free of discrimination under the federal Fair Housing Act and the Americans with Disabilities Act. These federal civil rights laws restrain municipalities from discriminating against individuals with disabilities and require municipalities to reasonably accommodate individuals with disabilities in order to allow them equal access to housing.

Vermont Legal Aid states that the settlement is intended to address the hardships that individuals with disabilities encounter in trying to find and retain safe and affordable rental housing in Montpelier. The City agreed that, within 60 days of ratification of the agreement, it would begin a formal public process to explore the creation of a program to provide loans to low-income landlords to address substantial health and safety code violations in low and moderate income rental housing. The City agreed to enlist the support and advice of the Montpelier Housing Task Force and to direct that the Task Force make this a priority. The process will include consideration of a relocation policy for tenants who are evicted because of landlords' violations of municipal health and safety codes. The City agreed to invite representative tenants from the Sibley Avenue residence to participate in this process. The City also agreed to allocate $10,000 in seed money to begin the work described in this paragraph, with any further allocations to be determined in the future.

In addition to the above, the City agreed to adopt a formal written policy providing that:

A. Tenants will receive written notice of any violations discovered through inspections.

B. The City may seek closure of rental housing (and eviction of tenants) only as a last resort to address imminent threats to health and safety, and only if remediation measures short of eviction are either unsafe or impractical. The City will reasonably attempt to consult with tenants prior to making the decision to seek closure and eviction.

C. Prior to filing any legal action seeking to close rental housing the City agrees to conduct an inspection of the premises, seven days before filing the action. Several other communities in Vermont, including Brattleboro and St. Johnsbury, have established revolving loan funds for low-income landlords as a way to maintain safe and affordable rental housing. These loans are specifically designed to help low-income landlords pay for repairs necessary for the health and safety of their tenants. These are repairs that the landlord might not otherwise be able to afford, or that the landlord could only afford by increasing the rent.

CONTACT US!

The Vermont Fair Housing News is published twice annually, in the spring and fall. Please contact us, if you would like to:

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